

# OHIO STATE JOURNAL ON DISPUTE RESOLUTION

VOLUME 13

1998

NUMBER 3

## Preface

MICHAEL B. GETTY, THOMAS J. MOYER AND ROBERTA COOPER  
RAMO\*

Mediation is a simple process of assisted negotiations, but expanded public-sector support for mediation has spawned complex legal issues. Two organizations, the National Conference of Commissioners on Uniform State Laws and the American Bar Association Section on Dispute Resolution, have agreed to collaborate through interlocking committees to draft a uniform or model mediation law that will suggest how these legal issues should be resolved and add clarity to the law regarding mediation.<sup>1</sup> This symposium represents the first phase of that effort—reflections on existing law by the academics involved in the project.

We begin with a conviction that Americans both take pride in the integrity of their justice system and yearn for simpler and more direct ways to resolve their disputes. The enormous growth in use of mediation over the last fifteen

---

\* Michael B. Getty, Judge, Illinois Chancery Court, serves as Chair of the Mediation Drafting Committee of the National Conference of Commissioners of Uniform State Laws. Thomas J. Moyer, Chief Justice, Supreme Court of Ohio, and Roberta Cooper Ramo, a past president of the American Bar Association, serve as Co-Chairs of the Mediation Drafting Committee of the American Bar Association Section on Dispute Resolution. The authors express gratitude to the William and Flora Hewlett Foundation, whose generous support made possible this symposium and the mediation law project.

<sup>1</sup> The National Conference members of the Drafting Committee, in addition to Chair Getty, include Phillip Carroll, Little Rock, Arkansas; David Calvert Dunbar, Jackson, Mississippi; Richard O. Gregerson, Sioux Falls, South Dakota; Byron D. Sher, Sacramento, California; and Martha Lee Walters, Eugene, Oregon. The ABA members of the Drafting Committee, in addition to Co-Chairs Moyer and Ramo, include James C. Diggs, Pittsburgh, Pennsylvania; Jose Feliciano, Cleveland, Ohio; Frank E.A. Sander, Cambridge, Massachusetts; and Annice M. Wagner, Washington, District of Columbia. Nancy H. Rogers serves as Reporter for the Drafting Committee. She is assisted by Richard Reuben and works with faculty from Bowdoin College, Harvard Law School, University of Missouri-Columbia Law School and The Ohio State University College of Law.

years provides impressive evidence that the process responds to this yearning. A model or uniform law regarding mediation should enhance, rather than interfere with, the expanded use of mediation and contribute to improving its effectiveness. At the same time, the law regarding mediation should preserve the public confidence in a justice system that is accessible and fair. These values serve as the organizing force for the symposium.

Over the last fifteen years, mediation-related law has grown from a few statutes to thousands of statutes, rules and regulations. The person seeking to understand these laws faces formidable barriers. Sheer numbers of laws pose one problem. Also, the laws are hard to find, because they often are buried within substantive statutes. Even when found, the researcher will find it hard to determine the reach of these statutes, an important problem because, even within a state, the laws often take diverse approaches for different types of disputes or forums on matters such as confidentiality and mediator standards. For example, the mediation-related rules for employment disputes sometimes differ, depending on whether the dispute relates to collective bargaining, discrimination or workers compensation. The law varies from state to state as well. As a result, persons who begin a mediation in one state may base their candor on the privilege laws in the mediation state, only to find that another state's law will apply when the matter is tried there.

The symposium takes advantage of the opportunity presented by the patchwork of laws. The authors assess experience under competing approaches in law and offer thoughtful suggestions that will lead to better, and not just clearer or simpler, laws regarding mediation. As this issue goes to press, drafters are beginning the task of applying these lessons to the thorny issues of drafting provisions for mediation confidentiality.

We are optimistic, while acknowledging the challenge of the task ahead, about the prospects of contributing to the development of this important field. The years of experimentation with a variety of legal approaches will inform the work of simplifying the law and selecting the best standard approaches. As the project proceeds, extensive research and broad consultation will be possible as a result of a grant from the William and Flora Hewlett Foundation, an entity whose gifts have contributed in important ways to the mediation field. Also, the academics participating in this symposium play a valuable role in providing background for the drafter's work. Despite these advantages, we have a healthy regard for the issues we will face during the next two to three years. Professor Leonard Riskin, a distinguished scholar involved in our effort, captured the essence of these hopes and doubts in the verses that follow.

*The Model Mediation Statute Project: Summary and Analysis*

by Leonard L. Riskin<sup>2</sup>

The basic laws on mediation  
Vary some across the nation  
Leaving lawyers so forlorn  
They'd like a law that's uniform

The ABA and Uniform Commissioners  
Hope to help perplexed practitioners  
And courts and legislatures, too  
By showing, simply, what to do

But as they plan for this propounding  
Up come issues so confounding  
That if they seek to set things straighter  
It may take an arbitrator

---

<sup>2</sup> C.A. Leedy Professor of Law and Director of the Center for the Study of Dispute Resolution at the University of Missouri-Columbia School of Law.

